
SENATE BILL No. 379

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-3-5; IC 24-3-5.2; IC 34-24-1-1.

Synopsis: Delivery sales of tobacco products. Prohibits the shipping of tobacco products to an Indiana resident who is not a tobacco products distributor. Repeals statutes governing delivery sales of cigarettes.

Effective: July 1, 2005.

Weatherwax

January 11, 2005, read first time and referred to Committee on Commerce and Transportation.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-3-5-0.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 0.3. As used in this chapter, "commission" refers to**
4 **the alcohol and tobacco commission created by IC 7.1-2-1-1.**
5 SECTION 2. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "delivery
7 sale" means a transaction for the purchase of tobacco products in which
8 an offer to purchase tobacco products is made:
9 (1) electronically using a computer network (as defined in
10 IC 35-43-2-3);
11 (2) by mail; or
12 (3) by telephone;
13 and acceptance of the offer results in delivery of the tobacco products
14 to a named individual **or entity** at a designated address.
15 SECTION 3. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE
16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor" includes**

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the following:

(1) A distributor as defined in IC 6-7-1-6.

(2) A distributor as defined in IC 6-7-2-2.

SECTION 4. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A merchant may not mail or ship tobacco products as part of a delivery sale ~~unless, before mailing or shipping the tobacco products, the merchant:~~

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing tobacco products by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the tobacco product order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of tobacco products by delivery sale is a taxable event for purposes of IC 6-7-1 and IC 6-7-2;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.

(b) If the commission determines that a merchant has violated subsection (a):

(1) a distributor may not accept a shipment of tobacco products from the merchant for a period, not to exceed one (1) year, determined by the commission; and

(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (a), as determined by the commission.

SECTION 5. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

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(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with

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money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

~~(12) Cigarettes that are sold in violation of IC 24-3-5.2; cigarettes that a person attempts to sell in violation of IC 24-3-5.2; and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.~~

~~(13)~~ (12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a

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person to facilitate a violation of IC 24-3-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 24-3-5-5; IC 24-3-5-6; IC 24-3-5-7; IC 24-3-5-8; IC 24-3-5.2.

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